



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

February 12, 2020

BY ECF AND EMAIL

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007
failla_nysdchambers@nysd.uscourts.gov

MEMO ENDORSED

Re: *United States v. Okechukwu Peter Ezika*, S5 18 Cr. 117 (KPF)

Dear Judge Failla:

The Government respectfully submits this letter to request a brief extension of time within which to file its sur reply to the defendant's reply memorandum of law in support of the defendant's motion to withdraw his guilty plea and to withdraw his waiver of the right to a grand jury indictment. (Dkt. Nos. 210-213.) The Government's sur reply presently is due on or before February 14, 2020. (Dkt. Nos. 214, 218.)

According to Richard Portale, Esq., the defendant's former counsel, Mr. Portale did not become aware of the defendant's January 16, 2020 attorney-client privilege waiver, *see* Dkt. Nos. 217-18, until in or about early February 2020, when the Government contacted Mr. Portale to coordinate the collection of all documents relevant to the defendant's allegations. The Government has now briefly spoken with Mr. Portale on several occasions, though not substantively regarding Mr. Portale's past representation of the defendant.

The Government understands from Mr. Portale that Mr. Portale is now out of the office on a 30-day paternity leave of absence, and Mr. Portale has informed the Government that he is not able to consult his own counsel about ethical considerations regarding what documents he can or cannot provide to the Government during this leave of absence. Specifically, Mr. Portale has indicated that he will be out of the office until at least on or about March 16, 2020.

In light of Mr. Portale's representations to the Government regarding his unavailability, the Government is not in a position to prepare its sur reply within the current deadline of February 14, 2020. The Government understands from Mr. Portale that Mr. Portale will need time to consult with his own counsel before he is in a position to provide necessary documentation to the Government. Accordingly, given the foregoing and to permit the Government sufficient time to review any relevant documents Mr. Portale is able to provide to the Government, the Government

respectfully requests an extension to file its sur reply until on or before March 31, 2020. The defendant does not oppose this request.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: /s/ Juliana N. Murray
Juliana N. Murray / Robert B. Sobelman
Assistant United States Attorneys
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cc: Michael P. Kushner, Esq. (by ECF and email)
Richard Portale, Esq. (by ECF and email)

Application GRANTED.

Dated: February 12, 2020
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE